

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 7

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ENVIRONMENTAL PROTECTION  
AGENCY-REGION VII  
REGIONAL HEARING CLERK

In the Matter of

Gary Conner, d/b/a Conner Realty  
Pittsburg, Kansas

Respondent

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Docket No. TSCA-07-2004-0129

**CONSENT AGREEMENT AND FINAL ORDER**

The United States Environmental Protection Agency (EPA), Region 7 (Complainant) and Gary Conner (Respondent) have agreed to a settlement of this action before the filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

**ALLEGATIONS**

**Jurisdiction**

1. This is an administrative action for the assessment of civil penalties instituted pursuant to Section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(a).
2. This Consent Agreement and Final Order serves as notice that EPA has reason to believe that Respondent has violated Section 409 of TSCA, 15 U.S.C. § 2689, by failing to comply with the regulatory requirements of 40 C.F.R. Part 745, Subpart F, *Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards Upon Sale or Lease of Residential Property*, promulgated pursuant to Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4852d.

### **Parties**

3. The Complainant, by delegation from the Administrator of the EPA, is the Chief, Radiation, Asbestos, Lead and Indoor Programs Branch, EPA, Region 7.

4. The Respondent is Gary Conner, doing business as Conner Realty, 104 W. 4<sup>th</sup> Street, Pittsburg, Kansas 66762.

### **Statutory and Regulatory Background**

5. Congress passed the Residential Lead-Based Paint Hazard Reduction Act of 1992 (the Act), 42 U.S.C. §§ 4851-56, to address the need to control exposure to lead-based paint hazards. The Act amended TSCA by adding Sections 401 through 412, 15 U.S.C. §§ 2681-92. Section 1018 of the Act required that EPA and the Department of Housing and Urban Development (HUD) jointly issue regulations requiring the disclosure of information relating to lead-based paint and/or lead-based paint hazards to persons selling or leasing housing constructed before the phase out of residential lead-based paint use in 1978. EPA and HUD issued those regulations on March 6, 1996, which are codified at 40 C.F.R. Part 745, Subpart F. The regulations require that, prior to purchasers and lessees becoming obligated under contract, sellers and lessors of most residential housing built before 1978 disclose the presence of known lead-based paint and/or lead-based paint hazards; provide purchasers and lessees with any available records or reports pertaining to the presence of lead-based paint and/or lead-based paint hazards; provide purchasers and lessees with a federally approved lead hazard information pamphlet and a lead warning statement; and provide purchasers with a 10-day opportunity to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards. The failure or refusal to comply with the regulations is a violation of Section 1018 of the Act and of Section 409 of TSCA, for which a monetary penalty may be assessed.

**Alleged Violations**

6. The Complainant hereby states and alleges that Respondent has violated TSCA and federal regulations promulgated thereunder, as follows:

**Allegations Pertaining to All Counts**

7. Respondent is an individual person who conducts business in Kansas as Conner Realty.

8. Respondent is an "agent" as that term is defined by 40 C.F.R. § 745.103, in that Respondent entered into contracts with certain residential rental property owners to represent them for the purpose of managing their properties located in Pittsburg, Kansas. These properties include: 101 W. Cleveland, 819 Atkinson, and 1801 N. Locust.

9. The properties referenced above were constructed prior to 1978.

10. The properties referenced above are "target housing" as that term is defined by 40 C.F.R. § 745.103 because the properties are housing constructed before 1978.

**Counts I through IV**  
**Failure to Provide Lead Hazard Information Pamphlet**

11. Records collected from Respondent show that he entered into four contracts to lease apartment units at the properties referenced above between June 5, 2000, and January 11, 2002.

12. Records collected from Respondent show that in each of the four contracts Respondent failed to provide the lessees with an EPA-approved lead hazard information pamphlet before the lessees were obligated under a contract to lease the target housing.

13. Respondent's failures to provide the lessees with an EPA-approved lead hazard information pamphlet are violations of 40 C.F.R. §§ 745.107 and 745.115(a), and in accordance with 40 C.F.R. § 745.118(e), violations of Section 1018 of the Act and of Section 409 of TSCA, for which Respondent is subject to civil penalties under Section 16 of TSCA, 15 U.S.C. § 2615.

### CONSENT AGREEMENT

1. For purposes of this proceeding, Respondent admits the jurisdictional allegations set forth above, and neither admits nor denies the factual allegations set forth above.

2. Respondent waives his right to contest the allegations above and his right to appeal the Final Order accompanying this Consent Agreement.

3. Respondent and Complainant agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorneys' fees.

4. Respondent certifies by the signing of this Consent Agreement and Final Order that to the best of Respondent's knowledge, he is presently in compliance with all requirements of 40 C.F.R. Part 745, Subpart F.

5. Respondent consents to the issuance of the Final Order hereinafter recited and consents to the payment of a mitigated civil penalty in the amount of One Thousand One Hundred and Fifty-Five Dollars (\$1155) to be paid within thirty (30) days of the effective date of the Final Order.

6. In settlement of this matter, Respondent agrees to complete the following supplemental environmental project (SEP), which the parties agree is intended to secure significant environmental or public health benefits:

Respondent agrees to conduct a lead abatement project. Specifically, Respondent agrees to have three (3) windows and two (2) interior doors in his property located at 214 East Washington in Pittsburg, Kansas, removed and replaced with three (3) new non-lead containing vinyl double hung replacement windows and one (1) new replacement door. The second doorway will be sealed off to form part of the wall. Additionally, all associated window and door framing that is exposed must be replaced with new materials. Respondent agrees that the abatement project shall only be performed by a person or firm which has been certified by the State of Kansas to perform lead-based paint activities, as that term is defined in 40 C.F.R. § 745.223.

7. The total expenditure for the SEP shall be not less than Four Thousand Four Hundred Dollars (\$4400) and the SEP shall be completed no later than December 31, 2004. All work required to complete the SEP shall be performed in compliance with all federal, state, and local laws and regulations.

8. Within thirty days of completion of the SEP, Respondent shall submit a SEP Completion Report to EPA, with a copy to the state agency identified below. The SEP Completion Report shall contain the following:

- (i) A detailed description of the SEP as implemented;
- (ii) Itemized costs, documented by copies of purchase orders, receipts or canceled checks;
- (iii) The final abatement report, as required by state law; and
- (iv) The following certification signed by Respondent:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and, based on my inquiry of those individuals immediately responsible for obtaining the information, the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

- (v) The report shall be directed to the following

As to EPA:  
Kori Kuehl  
ARTD/RALI  
EPA Region 7  
901 N. 5th Street  
Kansas City, KS 66101

As to the state:  
Tom Morey  
Kansas Department of Health and Environment  
1000 SW Jackson Street, Suite 200  
Topeka, KS 66612-1274

9. In the event that Respondent fails to complete the SEP in accordance with this Consent Agreement and Final Order or to the extent that actual expenditures for the SEP do not equal or exceed the cost of the SEP as set forth above, Respondent shall be liable for stipulated penalties as follows:

(i) If the SEP is not timely completed to the satisfaction of EPA in accordance with the terms of this Consent Agreement and Final Order, Respondent shall pay a stipulated penalty of \$4400.

(ii) If the SEP is completed to the satisfaction of EPA but Respondent's actual expenditures are less than 90 percent of the amount of money required to be expended on the SEP, Respondent shall pay a stipulated penalty of \$500.

(iii) Any stipulated penalties for which Respondent is liable under this agreement shall be due and payable within ten (10) days of Respondent's receipt of a written demand therefor from Complainant.

10. Respondent certifies that he is not required to perform or develop the SEP by any federal, state or local law or regulation; nor is Respondent required to perform or develop the SEP by agreement, grant or as injunctive relief in this or any other case or to establish compliance with state or local requirements. Respondent further certifies that Respondent has not received, and is not presently negotiating to receive, credit in any other enforcement action for the SEP. Respondent agrees not to claim this abatement project as a business expense on his federal, state, or local income tax returns and agrees not to depreciate the cost of the project on such tax returns.

11. Any public statement, oral or written, in print, film or other media, made by Respondent making reference to the SEP shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action taken by the United States Environmental Protection Agency."

12. Respondent understands that his failure to timely pay any portion of the mitigated civil penalty stated in Paragraph 5 above or any portion of a stipulated penalty as stated in Paragraph 9 above may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties and accumulated interest. In such case, interest shall accrue thereon at the applicable statutory rate on the unpaid balance until such civil penalty and any accrued interest are paid in full. A late payment handling charge of \$15 will be imposed after 30 days and an additional \$15 will be charged for each subsequent 30-day period. Additionally, as provided by 31 U.S.C. § 3717(e)(2), a six percent (6%) per annum penalty (late charge) may be assessed on any amount not paid within ninety (90) days of the due date.

### **FINAL ORDER**

Pursuant to the provisions of the Toxic Substances Control Act (TSCA), 15 U.S.C. §§ 2601 et seq., and based upon the information set forth in the Consent Agreement accompanying this Final Order, **IT IS HEREBY ORDERED THAT:**

1. Respondent shall pay a mitigated civil penalty of One Thousand One Hundred and Fifty-Five Dollars (\$1155) within thirty (30) days of the effective date of this Final Order. Such payment shall identify the Respondent by name and docket number and shall be by certified or cashier's check made payable to the "United States Treasury" and sent to:

EPA-Region 7  
c/o Mellon Bank  
P.O. Box 360748M  
Pittsburgh, Pennsylvania 15251.

2. A copy of the check shall simultaneously be sent to the following:

Regional Hearing Clerk  
U.S. Environmental Protection Agency  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101; and


Mike Gieryic  
Office of Regional Counsel  
U.S. Environmental Protection Agency  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101.

3. Respondent shall complete the Supplemental Environmental Project in accordance with the provisions set forth in the Consent Agreement and shall be liable for any stipulated penalty for failure to complete such project as specified in the Consent Agreement.

4. Respondent and Complainant shall each bear their own costs and attorneys' fees incurred as a result of this matter.

**RESPONDENT**  
**GARY CONNER, d/b/a CONNER REALTY**

Date: 2-11-04

By:   
Gary Conner



COMPLAINANT  
ENVIRONMENTAL PROTECTION AGENCY

Date: 2/19/04

By: Lynn M. Slogantz  
Lynn Slogantz, Acting Chief  
Radiation, Asbestos, Lead and Indoor  
Programs Branch

Date: February 19, 2004

By: Mike Gieryic  
Mike Gieryic  
Office of Regional Counsel

IT IS SO ORDERED. This Order shall become effective immediately.

Date: February 20, 2004

Robert L. Patrick  
ROBERT L. PATRICK  
Regional Judicial Officer  
EPA, Region 7

IN THE MATTER OF Gary Conner, d/b/a Conner Realty, Respondent  
Docket No. TSCA-07-2004-0129

CERTIFICATE OF SERVICE

I certify that the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:


Copy hand delivered to  
Attorney for Complainant:

Michael Gieryic  
Assistant Regional Counsel  
Region VII  
United States Environmental Protection Agency  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Gary Conner  
104 W. 4<sup>th</sup> Street  
Pittsburg, Kansas 66762

Dated: 2/23/04

  
Kathy Robinson  
Regional Hearing Clerk